

LEGISLATURE OF NEBRASKA
NINETY-SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 524

Introduced by Hilgert, 7

Read first time January 19, 1999

Committee: Judiciary

A BILL

- 1 FOR AN ACT relating to sports agents; to adopt the Athlete Agent
- 2 Registration and Accountability Act; to create a penalty;
- 3 and to provide severability.
- 4 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 18 of this act shall be known
2 and may be cited as the Athlete Agent Registration and
3 Accountability Act.

4 Sec. 2. For purposes of the Athlete Agent Registration
5 and Accountability Act, unless the context otherwise requires:

6 (1) Athlete means any person residing in Nebraska who is
7 seeking, or who may be in a position to seek, employment as a
8 professional athlete or based on his or her athletic reputation.
9 Athlete does not refer to a person who has already agreed to a
10 contract as a professional athlete, except that an athlete who has
11 agreed to a professional contract in one or more sports but has
12 retained amateur standing in one or more other sports shall be
13 considered an athlete for purposes of the act with respect to those
14 sports in which he or she retains amateur standing;

15 (2) Athlete agent means a person who (a) directly or
16 indirectly contacts any person with the intent or design to
17 recruit, solicit, or induce an athlete to discuss, consider,
18 negotiate, or enter into a representation contract, (b) for any
19 type of financial gain, procures, offers, promises, or attempts to
20 obtain employment, professional fees, or benefits for an athlete
21 with a professional sports team, as a professional athlete, or with
22 any person who markets or attempts to market the athlete's athletic
23 ability or athletic reputation, or (c) manages or invests, or
24 agrees to manage or invest, an athlete's earnings from the
25 marketing of the athlete's athletic ability or athletic reputation
26 or provides, or agrees to provide, financial planning or advice
27 with respect to such earnings;

28 (3) Athlete agent disclosure statement means a statement

1 containing the information described in subdivision (2) of section
2 3 of this act;

3 (4) Eligible student athlete means (a) an athlete who is
4 enrolled at an institution of higher education, who is eligible to
5 participate in intercollegiate athletics, and who does participate
6 in intercollegiate athletics, except that an athlete who is
7 temporarily ineligible, or who is ineligible but seeking to regain
8 eligibility, shall be considered eligible for purposes of this
9 section or (b) an athlete who has informed, in writing, an
10 institution of higher education of his or her intention to enroll
11 at that institution and participate in that institution's
12 intercollegiate athletic program;

13 (5) Institution of higher education means any college or
14 university in the United States that participates in
15 intercollegiate athletics; and

16 (6) Representation contract means any contract or
17 agreement in which an athlete agrees to authorize an athlete agent
18 to (a) represent the athlete in the marketing of the athlete's
19 athletic ability or athletic reputation or (b) to manage or invest
20 an athlete's earnings from the marketing of the athlete's athletic
21 ability or athletic reputation or provide financial planning or
22 advice with respect to such earnings.

23 Sec. 3. Any person who practices or seeks to practice as
24 an athlete agent in this state shall obtain a certificate of
25 registration from the Secretary of State in the following manner:

26 (1) The registrant shall be at least twenty-one years of
27 age;

28 (2) The registrant shall file an athlete agent disclosure

1 statement with the Secretary of State and with all institutions of
2 higher education in the state who have notified the Secretary of
3 State of their desire to receive such filings. The athlete agent
4 disclosure statement shall contain the following information, but
5 shall not contain any extraneous information:

6 (a) The registrant's name and the street address of the
7 registrant's principal place of business;

8 (b) The business or occupation engaged in by the
9 registrant for at least five years prior to the filing of the
10 registration;

11 (c) The registrant's educational background, training,
12 and experience related to serving as an athlete agent;

13 (d) The names and the street addresses of (i) all
14 persons, except bona fide employees on stated salaries, who are
15 financially interested as partners, associates, or profit sharers
16 in the operation of the business of the registrant and (ii) all
17 persons for whom the registrant is working as an independent
18 contractor;

19 (e) A record of all felony and all misdemeanor
20 convictions, findings of guilt, or pleas of no contest of the
21 registrant and of any person named pursuant to subdivision (2)(d)
22 of this section;

23 (f) A record of all sanctions issued to or disciplinary
24 actions taken against the registrant or against any athlete or
25 institution of higher education in connection with any transaction
26 or occurrence involving the registrant or any person named pursuant
27 to subdivision (2)(d) of this section;

28 (g) A record of all persons acting as athlete agents with

1 whom the registrant has had a relationship as an independent
2 contractor in the five years prior to the filing of the
3 registration; and

4 (h) The names and the street addresses of five
5 professional references;

6 (3) The registrant shall not have been, in any
7 jurisdiction within the five years prior to the filing for a
8 certificate of registration, convicted of, found guilty of, or
9 plead guilty or nolo contendere to a crime which relates to the
10 registrant's practice or ability to practice as an athlete agent.
11 The registrant shall supply the Secretary of State with sufficient
12 information to allow the Secretary of State to submit a criminal
13 history record check to the Federal Bureau of Investigation. The
14 Secretary of State shall receive a completed criminal history
15 record check prior to issuance of a certificate of registration;

16 (4) The registrant shall file either a surety bond or
17 proof of insurance as follows:

18 (a) Unless the registrant is eligible to and chooses to
19 file a proof of insurance pursuant to this subdivision, the
20 registrant shall file a surety bond issued by an insurance company
21 authorized to do business in this state in favor of the State of
22 Nebraska for the use and benefit of any athlete or institution of
23 higher education within this state injured or damaged, including
24 reasonable costs and attorney's fees, as a result of the acts or
25 omissions by the registrant or any representative acting under the
26 registrant's supervision or authority relating to his or her
27 activities as an athlete agent. The bond shall be in an amount not
28 less than fifteen thousand dollars to be determined each July 1 by

1 the Secretary of State and shall be in a form prescribed by the
2 Secretary of State. The bond shall be in effect for and cover all
3 times that the registrant is actively registered as an athlete
4 agent in this state; or

5 (b) If the registrant is an attorney admitted to practice
6 law in any state of the United States, the registrant may choose,
7 in lieu of filing a surety bond, to file proof of professional
8 liability insurance that would, in the determination of the
9 Secretary of State, cover injuries or damages to athletes and
10 institutions of higher education as a result of the acts or
11 omissions of the registrant or any representatives acting under the
12 registrant's supervision or authority in a fashion comparable to
13 the filing of a surety bond;

14 (5) If the registrant is not a resident of this state,
15 the registrant shall file with the Secretary of State an
16 irrevocable consent to service of process on a form prescribed by
17 the Secretary of State. The consent to service shall be signed and
18 notarized by the registrant or by an authorized agent of the
19 registrant. If the registrant is a corporation, the consent to
20 service shall be accompanied by a copy of the corporation's
21 authorization to do business in this state and a copy of the
22 corporation's resolution authorizing the consent to service. The
23 consent to service shall indicate that service upon the Secretary
24 of State is sufficient service upon the registrant, if the
25 plaintiff forwards by certified mail one copy of the service to the
26 business address of the registrant on file at the Secretary of
27 State;

28 (6) The registrant shall pay a registration fee of five

1 hundred dollars. The Secretary of State shall remit such fees to
2 the State Treasurer for credit to the Administration Cash Fund for
3 use in defraying the costs of administering the Athlete Agent
4 Registration and Accountability Act; and

5 (7) The Secretary of State may deny a certificate of
6 registration to any person who does not meet the requirements of
7 this section or with respect to whom the Secretary of State has
8 evidence of activity described in section 12 of this act that would
9 be sufficient to revoke an existing certificate of registration.
10 Any registrant who is denied a certificate of registration on such
11 basis shall have the opportunity for a hearing on the grounds of
12 the denial.

13 Sec. 4. Each certificate of registration shall be valid
14 for one year. Upon expiration of the certificate of registration,
15 the registered athlete agent shall obtain a renewal certificate by
16 again complying with section 3 of this act. The Secretary of State
17 may deny a renewal of registration to any person who no longer
18 meets the requirements of section 3 of this act or with respect to
19 whom the Secretary of State has evidence of activity described in
20 section 12 of this act that would be sufficient to revoke a
21 certificate of registration. Any registrant who is denied a
22 renewal certificate of registration on such basis shall have the
23 opportunity for a hearing on the grounds of the denial.

24 Sec. 5. (1) Within thirty days after the effective date
25 of this act, the Secretary of State shall notify the athletic
26 directors of all institutions of higher education in this state of
27 the Athlete Agent Registration and Accountability Act, of the
28 Legislature's intent to make accurate information about athlete

1 agents available to eligible student athletes, and of each
2 institution's option to have a copy of all athlete agent disclosure
3 statements filed with the Secretary of State forwarded to the
4 institution. Each institution desiring such statements shall
5 notify the Secretary of State and designate the address to which
6 the statements shall be sent by the Secretary of State.

7 (2) Any athlete agent disclosure statement distributed to
8 an athlete or an institution of higher education shall contain the
9 following language prominently printed on the first page:

10 "The information in this statement has been provided by
11 the athlete agent. The athlete agent is registered with the
12 Secretary of State, but such registration does not imply approval
13 or endorsement by the State of Nebraska nor has the information in
14 this statement been independently verified by the Secretary of
15 State."

16 Sec. 6. (1) It shall be unlawful for anyone acting as an
17 athlete agent or on behalf of an athlete agent to contact an
18 eligible student athlete except as provided in this section.

19 (2) Only the following contacts with an eligible student
20 athlete are permitted under the Athlete Agent Registration and
21 Accountability Act:

22 (a) Sending written materials to an eligible student
23 athlete if (i) the athlete agent includes with such written
24 materials a current copy of the athlete agent disclosure statement
25 and (ii) the athlete agent simultaneously sends an identical copy
26 of such written materials to the athletic director of the eligible
27 student athlete's institution of higher education;

28 (b) Conducting an on-campus interviews with and eligible

1 student athlete if arranged through the eligible student athlete's
2 institution of higher education and if the athlete agent strictly
3 adheres to the conditions imposed by such institution with respect
4 to such interviews; and

5 (c) Contact initiated by the eligible student athlete if
6 within seventy-two hours after such contact the athlete agent
7 provides (i) the eligible student athlete with a current copy of
8 the athlete agent disclosure statement and (ii) the athletic
9 director of the eligible student athlete's institution of higher
10 education with notice of such contact and a current copy of the
11 athlete agent disclosure statement, unless such statement is
12 already on file with the institution.

13 Sec. 7. Any representation contract between an athlete
14 agent and an eligible student athlete is void and unenforceable
15 unless the following conditions are met:

16 (1) The athlete agent and any representative or
17 independent contractor working on behalf of the athlete agent in
18 this state are registered under the Athlete Agent Registration and
19 Accountability Act;

20 (2) The representation contract is executed no earlier
21 than seventy-two hours after the athlete agent has provided the
22 eligible student athlete with a current copy of the athlete agent
23 disclosure statement;

24 (3) The representation contract contains the following
25 language situated prominently and in bold-faced type:

26 "1. YOU WILL LIKELY LOSE YOUR ELIGIBILITY TO COMPETE IN
27 INTERCOLLEGIATE ATHLETICS WHEN YOU SIGN THIS CONTRACT.

28 2. You may cancel this contract by notifying the athlete

1 agent in writing within ten days after the date you sign the
2 contract. EVEN IF YOU CANCEL THIS CONTRACT, THE INTERCOLLEGIATE
3 ATHLETIC ASSOCIATION OR ATHLETIC CONFERENCE TO WHICH YOUR COLLEGE
4 OR UNIVERSITY BELONGS WILL NOT NECESSARILY RESTORE YOUR ELIGIBILITY
5 TO PARTICIPATE IN INTERCOLLEGIATE ATHLETICS.

6 3. The athlete agent is registered with the Secretary of
7 State. Registration does not imply approval or endorsement by the
8 State of Nebraska of the athlete agent or of the terms and
9 conditions of this contract.";

10 (4) An athlete agent and an eligible student athlete who
11 enter into a representation contract shall provide written notice
12 of the representation contract to the athletic director of the
13 eligible student athlete's institution of higher education before
14 the contracting student athlete practices or participates in any
15 intercollegiate athletic event or within seventy-two hours after
16 entering into the contract, whichever comes first;

17 (5) The representation contract shall not be postdated
18 and shall not purport to take effect at a future time when the
19 athlete is no longer an eligible student athlete; and

20 (6) The athlete agent shall file written notice of the
21 representation contract, together with a nonrefundable filing fee
22 of five hundred dollars, to the Secretary of State within five days
23 after the signing of the contract. The Secretary of State shall
24 remit the filing fee collected to the State Treasurer for credit to
25 the Administration Cash Fund for use in defraying the costs of
26 administering the act.

27 Sec. 8. Any representation contract between an athlete
28 agent and an athlete other than an eligible student athlete is void

1 and unenforceable unless the following conditions are met:

2 (1) The athlete agent and any representative or
3 independent contractor working on behalf of the athlete agent in
4 this state are registered under the Athlete Agent Registration and
5 Accountability Act;

6 (2) The representation contract is executed no earlier
7 than seventy-two hours after the athlete agent has provided the
8 athlete with a current copy of the athlete agent disclosure
9 statement;

10 (3) The representation contract contains the following
11 language situated prominently and in bold-faced type:

12 "1. You may cancel this contract by notifying the
13 athlete agent in writing within ten days after the date you sign
14 the contract.

15 2. The athlete agent is registered with the Secretary of
16 State. Registration does not imply approval or endorsement by the
17 State of Nebraska of the athlete agent or of the terms and
18 conditions of this contract."; and

19 (4) The athlete agent shall file written notice of the
20 representation contract, together with a filing fee of five hundred
21 dollars, with the Secretary of State within five days after the
22 signing of the contract. The Secretary of State shall remit the
23 filing fee collected to the State Treasurer for credit to the
24 Administration Cash Fund for use in defraying the costs of
25 administering the act.

26 Sec. 9. Within ten days after signing a representation
27 contract, an athlete or eligible student athlete shall have the
28 right to cancel the representation contract and render it void by

1 giving written notice to the athlete agent. This right shall not
2 be waived under any circumstances.

3 Sec. 10. (1) If a representation contract is void,
4 otherwise unenforceable, or canceled within the allowable period
5 under the Athlete Agent Registration and Accountability Act, the
6 athlete agent shall refund any consideration paid to him or her by
7 the athlete or any person on behalf of the athlete.

8 (2) If a representation contract is void or otherwise
9 unenforceable under the act by virtue of an act or omission on the
10 part of the athlete agent, or if no representation contract is
11 entered into, the athlete agent shall not have the right to
12 reimbursement of anything of value received by the athlete or any
13 other person as an inducement to the athlete to enter into a
14 representation contract.

15 Sec. 11. A person shall be guilty of a Class I
16 misdemeanor if such person knowingly or intentionally:

17 (1) Acts or attempts to act as an athlete agent, or
18 directs a representative or independent contractor to act on his or
19 her behalf as an athlete agent, without being validly registered in
20 accordance with the Athlete Agent Registration and Accountability
21 Act;

22 (2) Contacts an eligible student athlete, directly or
23 indirectly through a representative or an independent contractor
24 acting on behalf of the athlete, except in accordance with section
25 6 of this act;

26 (3) Files or distributes an athlete agent disclosure
27 statement containing false or misleading information or containing
28 a material omission as to the specific information required by

1 subdivision (2) of section 3 of this act;

2 (4) Fails to provide notice of the signing of a
3 representation contract to the athletic director of the eligible
4 student athlete's institution of higher education in accordance
5 with section 7 of this act; or

6 (5) Fails to file notice of the signing of a
7 representation contract with the Secretary of State and pay the
8 required filing fee within five days after the signing of the
9 representation contract in accordance with sections 7 and 8 of this
10 act.

11 Sec. 12. In addition to any other remedies, a person
12 shall be subject to the civil remedies described in section 13 of
13 this act when he or she:

14 (1) Violates any provision of section 11 of this act;

15 (2) Executes or solicits execution, directly or
16 indirectly through a representative or independent contractor
17 acting on his or her behalf, of a representation contract that is
18 or would be void and unenforceable under the Athlete Agent
19 Registration and Accountability Act;

20 (3) Fails to account for or to pay within a reasonable
21 time, not to exceed thirty days, assets belonging to another person
22 which have come into his or her control in the course of conducting
23 business as an athlete agent or purported athletic agent;

24 (4) Commingles money or property of another person with
25 his or her agent's money or property by failing to maintain a
26 separate trust or escrow account for all proceeds received for the
27 other person;

28 (5) Offers anything of value to an athlete to induce the

1 athlete to enter into a representation contract, except that
2 negotiations regarding the athlete agent's fee are not to be
3 considered an inducement;

4 (6) Offers any type of consideration to an employee of an
5 institution of higher education in exchange for an introduction or
6 referral to an athlete;

7 (7) Knowingly provides financial benefit from the conduct
8 of business as an athlete agent to another person who is ineligible
9 to act as an athlete agent due to the requirements of the act;

10 (8) Knowingly gives false information or publishes or
11 causes to be published false or misleading information or
12 advertisements to an athlete regarding his or her services as an
13 athlete agent or regarding an athlete's prospects for employment as
14 a professional athlete or based on his or her athletic reputation;

15 (9) Violates or aids and abets the violation of the rules
16 of the athletic conference or intercollegiate athletic association
17 governing an athlete, an eligible student athlete, or an athlete's
18 or eligible student athlete's institution of higher education;

19 (10) Fails to provide the Secretary of State access to
20 financial and business records upon reasonable request; or

21 (11) Engages in conduct which demonstrates bad faith or
22 mismanagement that causes financial harm to an athlete or an
23 institution of higher education.

24 Sec. 13. Any person who violates section 12 of this act
25 shall be subject to:

26 (1) A civil penalty not to exceed ten thousand dollars.
27 The Secretary of State shall remit any funds collected to the State
28 Treasurer for credit to the permanent school fund;

1 (2) Revocation of his or her certificate of registration
2 as an athlete agent following a hearing;

3 (3) Forfeiture of any right of reimbursement for anything
4 of value received by any person or athlete as an inducement to
5 discuss, consider, negotiate, or enter into a representation
6 contract;

7 (4) Refunding consideration paid to the athlete agent by
8 an athlete or any person on behalf of an athlete;

9 (5) A civil suit for damages, reasonable attorney's fees,
10 and court costs by an athlete or an institution of higher education
11 for damages incurred due to the athlete agent's actions or
12 omissions in violation of the Athlete Agent Registration and
13 Accountability Act; and

14 (6) Providing equitable relief to an athlete or an
15 institution of higher education to prevent or minimize any harm
16 arising from the athlete agent's actions or omissions in violation
17 of the act.

18 Sec. 14. An athlete agent who is registered to do
19 business in this state shall establish and maintain complete
20 financial and business records. The Secretary of State shall have
21 the right to inspect and examine such records during normal
22 business hours.

23 Sec. 15. The Secretary of State shall adopt and
24 promulgate rules and regulations necessary to administer and
25 enforce the Athlete Agent Registration and Accountability Act.

26 Sec. 16. (1) Any representation contract that is void or
27 otherwise void and unenforceable by virtue of the Athlete Agent
28 Registration and Accountability Act shall be void as against public

1 policy.

2 (2) Any stipulation in a representation contract that its
3 provisions are governed by the laws of another state, or the
4 absence of any stipulation that the representation contract would
5 be governed by the laws of the State of Nebraska, is void.

6 Sec. 17. All periods of time described in the Athlete
7 Agent Registration and Accountability Act, except for the
8 seventy-two-hour time periods in subdivision (2)(c) of section 6 of
9 this act, subdivisions (2) and (4) of section 7 of this act, and
10 subdivision (2) of section 8 of this act, shall be interpreted as
11 if governed by the provisions of section 25-2221.

12 Sec. 18. If any section in this act or any part of any
13 section is declared invalid or unconstitutional, the declaration
14 shall not affect the validity or constitutionality of the remaining
15 portions.